

IC 29-3-8

Chapter 8. Responsibilities and Powers of Guardian

IC 29-3-8-1

Enumerated responsibilities of guardian

Sec. 1. (a) The guardian of a minor (other than a temporary guardian) has all of the responsibilities and authority of a parent and, unless otherwise ordered by the court, is responsible for the preservation of all the minor's property regardless of where the property is located. In addition and without limitation, the guardian:

- (1) must be or shall become sufficiently acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health;
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12;
- (3) to the extent the available parental income and property are insufficient to fulfill the parental obligation of support to the minor, shall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the minor's current needs for support, and protect and conserve that portion of the minor's property that is in excess of the minor's current needs;
- (4) shall report the physical and mental condition of the minor to the court as ordered by the court; and
- (5) has any other responsibilities that the court may order.

(b) The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court. In addition and without limitation, the guardian of an incapacitated person:

- (1) has, with respect to the incapacitated person, the same responsibilities as those of a guardian of a minor enumerated in subsection (a)(1), (a)(3), and (a)(4);
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12; and
- (3) has any other responsibilities that the court may order.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.10.

IC 29-3-8-2

Powers which guardian may exercise

Sec. 2. (a) The guardian of a minor may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) The power to receive property payable to the minor or the minor's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship.
- (2) The power to take custody of the person of the minor and

establish the minor's place of abode within or without Indiana if in accordance with IC 29-3-9-2.

(3) The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the minor or to pay for the minor's education, health, or welfare.

(4) The power to consent to medical or other professional care and treatment for the minor's health and welfare.

(5) The power to consent to the marriage or adoption of the minor.

(6) If reasonable, the power to delegate to the minor certain responsibilities for decisions affecting the minor's business affairs and well-being.

(7) The power to purchase a home for the minor or the minor's dependents, to protect the minor's existing home, or to protect the minor's interest in any real estate in which the minor may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the minor's best interest.

(8) The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property.

(9) The power to bind all or any part of the guardianship property in a transaction for the benefit of the minor unless the third party dealing with the guardian is acting in bad faith.

(10) If the minor has no living parent, other than a parent who is an incapacitated person, the powers granted to the parent of a minor under IC 29-3-3-3(1) through IC 29-3-3-3(8).

(b) The guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities, including the powers with respect to the incapacitated person and the incapacitated person's property regardless of where the property is located, that are granted to the guardian of a minor enumerated in subsection (a)(1) through (a)(9). *As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.11.*

IC 29-3-8-3

Mandatory responsibilities of guardian

Sec. 3. A guardian (other than a temporary guardian) shall do the following:

(1) Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees.

(2) Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person.

(3) Conserve any property of the protected person in excess of the protected person's current needs.

(4) Encourage self-reliance and independence of the protected person.

(5) Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent.

As added by P.L.169-1988, SEC.1. Amended by P.L.108-1996, SEC.6.

IC 29-3-8-4

Exercise of powers to perform responsibilities; enumeration

Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

(1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.

(2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.

(3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).

(4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.

(5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.

(6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

(A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.

(B) The accustomed standard of living of the protected person and the protected person's dependents.

(C) Other funds or sources used for the support of the protected person and the protected person's dependents.

(7) To distribute income and discretionary amounts of principal

in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:

- (A) Directly to the protected person.
- (B) To a guardian of the protected person appointed in another state.
- (C) To a custodian for the protected person under IC 30-2-8.5.
- (D) To an adult relative of the protected person.
- (E) By expending the money or using the property directly for the benefit of the protected person.
- (8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.
- (9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.
- (10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.
- (11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.267-1989, SEC.1; P.L.77-1992, SEC.7.

IC 29-3-8-5

Sale or encumbrance of guardianship property; conflicts of interest

Sec. 5. (a) Any:

- (1) sale or encumbrance of any part of the property of a protected person to a guardian or guardian's spouse, agent, attorney, or any corporation, trust, or other organization in which the guardian has a substantial beneficial interest; or
- (2) other transaction involving the property that is affected by a substantial conflict between the interest of the protected person and the guardian's personal interest;

is void unless approved by the court.

(b) Every contract, sale, or conveyance executed by a protected person is void unless the protected person is a minor, in which event the contract, sale, or conveyance is voidable.

As added by P.L.169-1988, SEC.1. Amended by P.L.238-2005, SEC.15.

IC 29-3-8-6

Sale or transfer of guardianship property contrary to terms of

protected person's will; election of devisee

Sec. 6. If:

- (1) a guardian sells or transfers during a protected person's lifetime property belonging to the protected person that is specifically devised to another in a will executed by the protected person;
- (2) the protected person subsequently dies; and
- (3) the devised property is consequently not contained in the protected person's estate following the death of the protected person;

the devisee may, at the devisee's option, elect to receive the value of the devised property, as valued at the time of death of the protected person, as a general devise or the proceeds of the sale or transfer as a specific devise.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.72; P.L.252-2001, SEC.28.

IC 29-3-8-6.5

Severance of property jointly owned with rights of survivorship or use of the assets of a multiple party account

Sec. 6.5. (a) If:

- (1) a guardian takes possession of property that is:
 - (A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; or
 - (B) owned as a multiple party account with another person as joint owner or beneficiary;
- (2) the guardian:
 - (A) severs the joint ownership of the property; or
 - (B) uses the assets of the multiple party account; and
- (3) the protected person subsequently dies while the other person is living;

the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

- (A) the value of the severed or used property retained by the other person at the time ownership was severed or used, if any; from
- (B) the value of the joint property or multiple party account at the time ownership was severed or the assets were used.

STEP TWO: Divide:

- (A) the remainder determined under STEP ONE; by
- (B) the value of the protected person's property, including the jointly held property or multiple party account, at the time ownership was severed or the assets were used.

STEP THREE: Multiply:

- (A) the quotient determined under STEP TWO; by
- (B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11 and transfer on death transfers completed under IC 32-17-14.

As added by P.L.33-1989, SEC.73. Amended by P.L.143-2009, SEC.16.

IC 29-3-8-7

Sale, division, or disposition of property; contracts entered into before incapacity; performance by guardian

Sec. 7. If the court finds that:

- (1) an incapacitated person who is a protected person did, before the person became an incapacitated person, enter into a written contract, including a contract for the sale, division, or other disposition of property;
- (2) the obligations of the contract have not been fully carried out; and
- (3) the contract was a good and binding contract at the time of the making of the contract;

the court shall authorize the guardian of the protected person to perform the contract without notice or hearing unless otherwise ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.74.

IC 29-3-8-8

Limitations on guardian powers

Sec. 8. (a) The court, at the time of appointment or later, on its own motion or on petition of the protected person or other person approved by the court, may:

- (1) confer upon the guardian any additional responsibilities and powers;
- (2) increase or decrease the bond of the guardian to satisfy the requirements of IC 29-3-7-1; or
- (3) limit the responsibilities and powers of the guardian otherwise conferred by this article and create a limited guardianship.

(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-8-9

Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services; conduct of hearing

Sec. 9. (a) A probate or juvenile court may include in its order creating a guardianship of a minor the following:

- (1) A requirement that the minor must reside with the guardian until the guardianship is terminated or modified.

(2) Any terms and conditions that a parent must meet in order to seek modification or termination of the guardianship.

(b) Except as provided in IC 29-3-12, if an order creating a guardianship contains terms and conditions described in subsection (a)(2), the court may modify or terminate the guardianship only if the parent:

- (1) complies with the terms and conditions; and
- (2) proves the parent's current fitness to assume all parental obligations by a preponderance of the evidence.

(c) If:

(1) a petition is filed for modification, resignation, or removal of the guardian or termination of the guardianship before the parent complies with the court ordered terms and conditions described in subsection (a)(2); and

(2) the minor:

(A) was the subject of a petition alleging the child to be a child in need of services; or

(B) is participating in a program of informal adjustment;

the court shall refer the petition to the department of child services for the department of child services to determine the placement of the child in accordance with the best interests of the child.

(d) A court shall notify the department of child services:

(1) if:

(A) the court appoints a guardian for a minor who:

(i) was the subject of a petition alleging the minor to be a child in need of services; or

(ii) is participating in a program of informal adjustment; and

(B) a petition to modify or terminate the guardianship of the minor or a petition regarding the death, resignation, or removal of the guardian is filed; and

(2) of any hearings related to the petitions described under subdivision (1)(B).

(e) If a minor was the subject of a petition alleging the minor to be a child in need of services or is participating in a program of informal adjustment, the court shall do the following at a hearing regarding a petition filed under this section:

(1) Consider the position of the department of child services.

(2) If requested by the department of child services, allow the department of child services to present evidence regarding:

(A) whether the guardianship should be modified or terminated;

(B) the fitness of the parent to provide for the care and supervision of the minor at the time of the hearing;

(C) the appropriate care and placement of the child; and

(D) the best interests of the child.

(f) The department of child services or the proposed guardian shall notify the court creating a guardianship if the department of child services has approved financial assistance to a guardian for the benefit of the protected person, as a component of child services (as

defined in IC 31-9-2-17.8(1)(E)). If the guardian will be provided assistance as a component of child services, the court shall order the guardian to provide financial support to the protected person to the extent the following resources do not fully support the needs of the protected person:

- (1) The guardianship property of the protected person.
- (2) Child support or other financial assistance received by the guardian from the protected person's parent or parents.
- (3) Periodic payments the guardian receives from the department of child services for support of the protected person as set forth in the department of child service's rules or the terms of the guardianship assistance agreement.

As added by P.L.162-2011, SEC.3. Amended by P.L.48-2012, SEC.8.